

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

JAMES GEMELAS, On Behalf of Himself and  
All Others Similarly Situated,

Plaintiff,

v.

THE DANNON COMPANY, INC.,

Defendant.

No. CV-08-236

CLASS ACTION

JUDGE DAN A. POLSTER

AGREED ORDER PERMITTING DISTRIBUTION OF PAYMENTS  
TO OBJECTORS FROM THE SETTLEMENT FUND

BLOOD HURST & O'REARDON LLP  
TIMOTHY G. BLOOD  
LESLIE E. HURST  
THOMAS J. O'REARDON II  
600 B Street, Suite 1550  
San Diego, CA 92101  
Telephone: 619/338-1100  
619/338-1101 (fax)

PISCITELLI LAW FIRM  
FRANK E. PISCITELLI, JR.  
55 Public Square, Suite 1950  
Cleveland, OH 44113  
Telephone: 216/931-7000  
216/931-9925 (fax)

CLIMACO, WILCOX, PECA, TARANTINO  
& GAROFOLI CO., L.P.A.  
JOHN R. CLIMACO  
PATRICK G. WARNER  
55 Public Square, Suite 1950  
Cleveland, OH 44113  
Telephone: 216/621-8484  
216/771-1632 (fax)  
SCOTT KALISH CO., L.L.C.  
D. SCOTT KALISH  
1468 West 9th Street, Suite 405  
Cleveland, OH 44113  
Telephone: 216/502-0570  
scottkalishcollc@cs.com

[Additional Counsel Appear on Signature Page.]

The Plaintiff Class, The Dannon Company, Inc. and Objectors Robert Falkner, Wanda Cochran, Grace M. Cannata, Danette Loeffler, Brad Henry, and Sheila Lodwick, represented by Edward Cochran, Edward Siegel, Francis E. Sweeney, Jr. and Sam Cannata (“Cochran Objectors”); Denise Fairbank represented by Kenneth Nelson and Edward Siegel (“Nelson Objectors”); Steven Cope, represented by Darrell Palmer and Edward Siegel (“Palmer Objectors”); Clyde F. Padgett, *pro se* (“Objector Padgett”); James Wilson represented by Charles H. Cooper, Jr. (“Cooper Objector”); Paul Rothstein and his client or clients (“Rothstein Objector”); and Albert Bacharach and his client or clients (“Bacharach Objector”) (collectively referred to as “The Objectors”) have agreed to enter into settlement agreements which will include the following terms and conditions:

1. Attorneys Edward Cochran and Francis Sweeney agree they will immediately dismiss and abandon Court of Appeals Case No. 10-03933;
2. Attorney James Wilson agrees he will immediately dismiss and abandon Court of Appeals Case No. 10-3934;
3. Objector Clyde F. Padgett agrees he will immediately dismiss and abandon Court of Appeals Case No. 10-3935;
4. The Objectors agree to withdraw all Motions for Fees;
5. The Objectors agree that there will be no further objections, motions, actions, appeals, or any other proceedings of any kind filed or maintained by or on behalf of The Objectors collectively or individually by the Cochran Objectors, the Palmer Objectors, the Cooper Objectors, the Nelson Objectors, the Rothstein Objectors, the Bacharach Objectors and the Objector Padgett.
6. Payment will be made to The Objectors thirty (30) days after the (i) Effective Date as defined in the Amended Stipulation of Settlement between the Class and Dannon and (ii) there is no further activity or right to file in the appellate courts;
7. The Objectors agree that if an appellate court issues an opinion in *Gemelas v. Dannon Company, Inc.*, The Objectors and their Counsel will not receive any payment under

the terms of the settlement agreements; and

8. Nothing in the settlement agreements shall be deemed to be (i) an admission or acknowledgement by any party hereto of any right, claim or interest in this case except as expressly stated therein or (ii) a modification of the final judgment.

Subject to the final executed settlement agreements and to the foregoing terms and conditions, the Court hereby approves the withdrawal of the objections and orders that any payments pursuant to these settlement agreements may be paid out of the Settlement Fund, as that term is defined in §II.A.(25) of the Amended Stipulation of Settlement, filed January 20, 2010, in accordance with §IV.A.(2)(d) of the Amended Stipulation of Settlement, as requested by the Cochran Objectors, Nelson Objectors, Palmer Objectors, Rothstein Objectors, Bacharach Objectors and Objector Padgett.

IT IS SO ORDERED.

DATED: \_\_\_\_\_

\_\_\_\_\_  
THE HONORABLE DAN A. POLSTER  
UNITED STATES DISTRICT COURT JUDGE

Submitted by:

DATED: September 16, 2010

CLIMACO, WILCOX, PECA, TARANTINO &  
GAROFOLI CO., L.P.A.

s/John R. Climaco

JOHN R. CLIMACO

PATRICK G. WARNER

55 Public Square, Suite 1950

Cleveland, Ohio 44113

Telephone: 216/621-8484

[jrcrim@climacolaw.com](mailto:jrcrim@climacolaw.com)

[sdsimp@climacolaw.com](mailto:sdsimp@climacolaw.com)

[pwarn@climacolaw.com](mailto:pwarn@climacolaw.com)

BLOOD HURST & O'REARDON LLP

TIMOTHY G. BLOOD

LESLIE E. HURST

THOMAS J. O'REARDON II

600 B Street, Suite 1550

San Diego, CA 92101

Telephone: 619/338-1100

619/338-1101 (fax)

[tblood@bholaw.com](mailto:tblood@bholaw.com)

[lhurst@bholaw.com](mailto:lhurst@bholaw.com)

[toreardon@bholaw.com](mailto:toreardon@bholaw.com)

PISCITELLI LAW FIRM

FRANK E. PISCITELLI, JR.

55 Public Square, Suite 1950

Cleveland, OH 44113

Telephone: 216/931-7000

216/931-9925 (fax)

[frank@feplaw.com](mailto:frank@feplaw.com)

SCOTT KALISH CO., L.L.C.

D. SCOTT KALISH

1468 West 9th Street, Suite 405

Cleveland, OH 44113

Telephone: 216/502-0570

[scottkalishcollc@cs.com](mailto:scottkalishcollc@cs.com)

ROBBINS GELLER RUDMAN  
& DOWD LLP  
CULLIN A. O'BRIEN  
120 East Palmetto Park Road, Suite 500  
Boca Raton, FL 33432  
Telephone: 561/750-3000  
561/750-3364 (fax)  
cobrien@rgrdlaw.com

LAW OFFICE OF JONATHAN M. STEIN  
JONATHAN M. STEIN  
102 E. Palmetto Park Road, Suite 420  
Boca Raton, FL 33432  
Telephone: 561/961-2244  
561/750-5964 (fax)  
jstein@jonathansteinlaw.com

SHEPHERD FINKELMAN MILLER  
& SHAH, LLP  
JAYNE A. GOLDSTEIN  
1640 Town Center Circle, Suite 216  
Weston, FL 33326  
Telephone: 954/515-0123  
954/515-0124 (fax)  
jgoldstein@sfmslaw.com

GILMAN AND PASTOR, LLP  
DAVID PASTOR  
63 Atlantic Avenue, 3rd Floor  
Boston, MA 02110  
Telephone: 617/742-9700  
617/742-9701 (fax)  
dpastor@gilmanpastor.com

CUNEO GILBERT & LaDUCA, L.L.P.  
JONATHAN W. CUNEO  
PAMELA GILBERT  
507 C Street, N.E.  
Washington, DC 20002  
Telephone: 202/789-3960  
202/789-1813 (fax)  
jonc@cuneolaw.com  
pamelag@cuneolaw.com

EMERSON POYNTER LLP  
SCOTT E. POYNTER  
500 President Clinton Ave., Ste. 305  
Little Rock, AR 72201  
Telephone: 501/907-2555  
501/907-2556( fax)  
scott@emersonpoynter.com

Attorneys for Plaintiff

DATED: September 16, 2010

ULMER & BERNE  
MICHAEL N. UNGAR  
DAVID D. YEAGLEY

s/David D. Yeagley

---

DAVID D. YEAGLEY

1100 Skylight Office Tower  
1600 West Second Street  
Cleveland, OH 44113  
Telephone: 216/583-7216  
216/583-7217 (fax)  
BINGHAM McCUTCHEN LLP  
BRUCE A. FRIEDMAN  
GINA M. SIMAS  
Fourth Floor, North Tower  
1620 26th Street  
Santa Monica, CA 90404-4060  
Telephone: 310/907-1000  
310/907-2000 (fax)

ARNOLD & PORTER LLP  
ANGEL A. GARGANTA  
TRENTON H. NORRIS  
BETH H. PARKER  
One Embarcadero Center, 22<sup>nd</sup> Floor  
San Francisco, CA 94111  
Telephone: 415/356-3000  
415/356-3099 (fax)

Attorneys for Defendant

**ECF CERTIFICATION**

The filing attorney attests that he has obtained concurrence regarding the filing of this document from the signatories to this document.

DATED: \_\_\_\_\_, 2010

CLIMACO, WILCOX, PECA, TARANTINO &  
GAROFOLI CO., L.P.A.

By: s/John R. Climaco  
JOHN R. CLIMACO

CERTIFICATE OF SERVICE

I hereby certify that on \_\_\_\_, 2010, I electronically filed the foregoing with the Clerk of the Court using the CM/ECF system which will send notification of such filing to the e-mail addresses denoted on the Electronic Mail Notice List, and I hereby certify that I have mailed the foregoing document or paper via the United States Postal Service to the non-CF/ECF participants indicated on the Electronic Mail Notice List.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on \_\_\_\_, 2010.

s/John R. Climaco

---

JOHN R. CLIMACO

CLIMACO, WILCOX, PECA, TARANTINO &  
GAROFOLI, CO., LLP  
55 Public Square, Suite 1950  
Cleveland, Ohio 44113  
Telephone: 216/621-8484  
Telefax: 216/771-1632  
jrclim@climacolaw.com